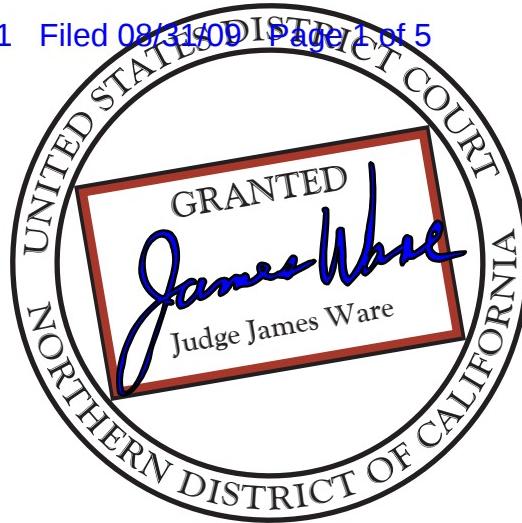


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Attorneys for Mr. Marlon Spencer



**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

The above-captioned matter is currently set on September 14, 2009 before this Court for status hearing or anticipated defendant pretrial motions. The parties request that this Court continue the status conference to October 5, 2009 at 1:30 p.m. and that the Court continue to exclude time under the Speedy Trial Act between September 14, 2009 and October 5, 2009.

The United States has provided pretrial discovery including a search warrant and return issued and executed on May 8, 2007 of the defendant's home. The statement of probable cause in the aforementioned search warrant application was not provided by the Government and upon further inquiry by AUSA Shawna Yen, the Government is not currently in possession of said document. AUSA Shawna Yen contacted the District Attorney's office for the County of

1 Monterey in an effort to obtain and provide the statement of probable cause. As of this date, the
2 district attorney's office has not responded to AUSA Shawna Yen's request. The clerk of the
3 Monterey County Superior Court informed defense counsel that they maintain possession of the
4 entire search warrant application including the statement of probable cause. The clerk of the
5 court informed my office that the order would be ready for pick up within approximately seven
6 days of receipt.

7 On August 27, 2009 defense counsel Ariel Boyce-Smith faxed a request form to the
8 Monterey County Superior Court ordering a copy of the search warrant application including the
9 statement of probable cause. Defense counsel Ariel Boyce-Smith conferred with AUSA Shawna
10 Yen and informed her that the search warrant application, including the statement of probable
11 cause, has been ordered directly from the Monterey County Superior Court and that it would take
12 approximately seven days to process the request.

13 Defendant intends to file a motion to suppress in this matter and an integral part of that
14 motion requires a review of the entire search warrant application and statement of probable
15 cause. Accordingly, the Defendant needs additional time to effectively prepare the papers and
16 filings on the motion to suppress. For those reasons, the parties stipulate and request that the
17 Court continue the hearing and exclude time between September 14, 2009 and October 5, 2009
18 under the Speedy Trial Act for reasonable time necessary for counsel to effectively prepare,
19 pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv). The parties jointly agree that the ends of justice
20 served by granting the continuance outweigh the best interests of the public and the defendant in
21 a speedy trial.

22
23 Dated August 28, 2009
24

25 _____ /s/ Ariel Boyce-Smith

26 Ariel Boyce-Smith
27 Attorney for Defendant

_____ /s/ Shawna Yen

Shawna Yen
Assistant United States Attorney

1 I hereby attest that I have authorization to file this document on behalf of those
2 individuals whose signatures are indicated by a “conformed” signature (/S/) within this e-filed
3 document.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)
12 v. Plaintiff,) Case No.: CR-09-0400 JW
13 MARLON JERMAINE SPENCER,) [PROPOSED] ORDER GRANTING
14 v. Defendant.) STIPULATED REQUEST TO CONTINUE
15) STATUS HEARING OR ANTICIPATED
16) DEFENDANT'S PRETRIAL MOTIONS
17) AND TO EXCLUDE TIME UNDER THE
18) SPEEDY TRIAL ACT
19) Date: September 14, 2009
20) Time: 1:30 p.m.
21) Court: Hon. James Ware

22 The parties jointly requested that the status hearing or anticipated defendant pretrial
23 motions in this matter be continued from September 14, 2009 to October 5, 2009 and that time
24 between September 14, 2009 to October 5, 2009 be excluded under the Speedy Trial Act to allow
25 for the effective preparation of counsel for the reasons set forth in the parties' stipulated request.
26 For the reasons stated, the Court finds that the ends of justice served by granting the continuance
27 outweigh the best interests of the public and the defendant in a speedy trial. Good cause
28 appearing therefore, and pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv),

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30 ///

1 **IT IS HEREBY ORDERED** that this matter is set for status hearing or anticipated
2 defendant's pretrial motions on September 14, 2009 at 1:30 p.m. and that time between
3 September 14, 2009 to October 5, 2009 will continue to be excluded under the Speedy Trial Act
4 to allow for the effective preparation of counsel, taking into account the exercise of due
5 diligence.

6 Any anticipated motions shall be noticed in accordance with the Criminal Local and Federal
7 Rules of Procedure.

8 DATED: August 31, 2009



9 HONORABLE JAMES WARE

10 United States District Court Judge

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